

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

U'SAGAIN, LLC,

Plaintiff,
v.

CITY OF LOS ANGELES,
Defendant.

Case No.: CV 24-6210-CBM-BFMx

**ORDER RE: PRELIMINARY
INJUNCTION**

The matters before the Court are the parties' briefs regarding the order to show cause re: preliminary injunction. (Dkt. Nos. 19, 20.)

I. BACKGROUND

This is an action brought by Plaintiff U'SAgain LLC on July 24, 2024 against the City of Los Angeles to enjoin the Los Angeles Municipal Ordinance #187248 (the "Ordinance") which regulates collection bins in the City of Los Angeles. (*See Compl. Ex. 2.*) The Complaint asserts five causes of action: (1) violation of the First Amendment (free speech); (2) violation of the First Amendment by Imposing a Prior Restraint on Speech; (3) violation of the Fourteenth Amendment; (4) violation of Article 1, Section 2 of the California Constitution; and (5) violation of Article 1, Section 7 of the California Constitution. The Complaint alleges on July 1, 2024, the City issued "Orders to Comply" to Plaintiff for violating the Ordinance as to its collection bins located at:

1 (1) 6600 Topanga Canyon Blvd., (2) 19350 W. Nordhoff St., (3) 9301 Tampa
2 Ave., (4) 19350 W. Rinaldi St., and (5) 8840 Corbin Ave; and set a compliance
3 date for July 31, 2024. (*Id.* Ex. 3.)

4 The Court denied Plaintiff's first request for a temporary restraining order
5 because Plaintiff failed to file a proof of service and did not identify its efforts to
6 give notice to Defendant as required under Fed. R. Civ. P. 65(b). (Dkt. No. 12.)
7 On July 31, 2024, Plaintiff filed a second request for a temporary restraining order
8 and a proof of service. (Dkt. Nos. 13, 14.) On July 31, 2024, the Court granted
9 the second request for a temporary restraining order (the "TRO"), ordered
10 Defendant to show cause why a preliminary injunction should not be issued, and
11 ordered Plaintiff to file a reply. (Dkt. No. 15.) On August 13, 2024, after the
12 matter was fully briefed, the Court heard oral arguments during which Defendant
13 agreed the TRO would remain in full force and effect until the Court issued its
14 ruling re: a preliminary injunction. (Dkt. No. 24.) *See* Fed. R. Civ. P. 65(b).

15 **II. STATEMENT OF THE LAW**

16 A party seeking a preliminary injunction must demonstrate (1) it is likely to
17 succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of
18 injunctive relief, (3) the balance of equities is in its favor, and (4) injunctive relief
19 is in the public interest. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20
20 (2008). Alternatively, "a party is entitled to a preliminary injunction if it
21 demonstrates (1) serious questions going to the merits, (2) a likelihood of
22 irreparable injury," (3) a balance of hardships that tips sharply towards the
23 plaintiff, and (4) the injunction is in the public interest." *Flathead-Lolo-Bitterroot*
24 *Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (internal
25 quotations and citations omitted).

26 **III. DISCUSSION**

27 **A. Request for Judicial Notice**

28 Defendants requests that the Court take judicial notice of the following:

- 1 1. January 22, 2018 Department of City Planning Recommendation
2 Report, included in Los Angeles City Council file 14-0611 (Ex.
3 A);
4 2. March 10, 2021 report from the Office of the City Attorney
5 regarding “Draft Ordinance Amending Section 12.03, 12.21,
6 12.26, 14.4.2, and 98.0402 of the Los Angeles Municipal Code to
7 Establish Operational, Aesthetic, and Maintenance Regulations for
8 Collection Bins, included in Los Angeles City Council file 14-
9 0611 (Ex. B);
10 3. CalRecycle Form 770, Certification Application for Recycling
11 Centers and Processors, available at
12 <https://calrecycle.ca.gov/bevcontainer/forms/> (Ex. C);
13 4. City of Los Angeles Form Gen. 187, Solid Waste
14 Hauler/Contractor Permit Application, available at
15 https://www.lacitysan.org/san/faces/home/portal/s-lsh-wwd/s-lsh-wwd-s/s-lsh-wwd-s-c/s-lsh-wwd-s-c-whp?_adf.ctrl-state=pd86vmwoj_5&_afrLoop=39729234114650098# (Ex. D);
16 5. List of Permitted Waste Haulers in City of Los Angeles, available
17 at https://www.lacitysan.org/san/faces/home/portal/s-lsh-wwd/s-lsh-wwd-s/s-lsh-wwd-s-c/s-lsh-wwd-s-c-whp?_adf.ctrl-state=pd86vmwoj_5&_afrLoop=39729234114650098# (Ex. E);
18 6. Excerpts from Los Angeles City Council File for Ordinance No.
19 176840 (Ex. F);
20 7. Los Angeles Municipal Code Section 12.03 (Ex. G); and
21 8. Excerpts from Los Angeles Municipal Code Section 12.21 (Ex.
22 H).

18 (Dkt. No. 19-1 (“RJN”).) Plaintiff did not oppose Defendant’s request for judicial
19 notice. The Court grants Defendant’s request for judicial notice because Exhibits
20 A-H are matters of public record or information posted on government websites,
21 and neither party disputes their authenticity. *See Fed. R. Civ. P. 201; Tollis, Inc.*
22 *v. Cnty. of San Diego*, 505 F.3d 935, 938, n.1 (9th Cir. 2007); *Santa Monica Food*
23 *Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025, n.2 (9th Cir. 2006);
24 *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010); *Estate of*
25 *Fuller v. Maxfield & Oberton Holdings, LLC*, 906 F. Supp. 2d 997, 1003-04 (N.D.
26 Cal. 2012).

27 **B. Likelihood of Success on the Merits**

28 Plaintiff contends the Ordinance violates its First Amendment free speech

1 rights.¹ Here, Plaintiff's collection bins implicate the First Amendment and are
2 protected speech rather than commercial speech because they are charitable
3 solicitations which constitute "speech seeking support for particular causes."²
4 *Nat'l Fed'n of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202, 213 (5th Cir. 2011)
5 (citing *Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980)); see
6 also *Planet Aid v. City of St. Johns, Mich.*, 782 F.3d 318, 325-26 (6th Cir. 2015);
7 *Linc-Drop, Inc. v. City of Lincoln*, 996 F. Supp. 2d 845, 855 (D. Neb. 2014)
8 (citing *Abbott*, 647 F.3d at 212–13; *Schaumburg*, 444 U.S. at 632).² Therefore,
9 the Court must determine whether the ordinance is content neutral or content
10 based. *See Recycle for Change*, 856 F.3d at 669.

11 The Ordinance defines "collection bin" as "[a]ny box, canister, receptacle,
12 or other container that can be opened and closed, and is used for collecting
13 salvageable personal property, including, but not limited to, clothing, shoes,
14 books, and household items for periodic off-site processing and/or redistribution.
15 For purposes of this definition, salvageable personal property **shall not include**
16 **recyclable materials not intended for re-use**, including, but not limited to,
17 newspapers, plastic, glass, aluminum, electronics, toxic or hazardous materials,
18 and solid waste; nor any personal property that, because of its size, does not fit
19 inside the Collection Bin." (Ordinance, Section 1 (emphasis added).) Plaintiff
20 argues the Ordinance is viewpoint discriminatory "because it subjects unattended
21 collection bins collecting for reuse to significantly more stringent placement and
22 size restrictions than unattended collection bins collecting for recycling," and thus
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24 ¹ Plaintiff's request for a temporary restraining order only addressed Plaintiff's
25 First Amendment free speech claim, and did not address Plaintiff's equal
protection claims or claims under the California Constitution.

26 ² Contrary to Defendant's contention, the Ninth Circuit did not find in *Recycle for*
27 *Change v. City of Oakland*, 856 F.3d 666 (9th Cir. 2017), that collection bins do
not implicate the First Amendment. Rather, the Ninth Circuit assumed that the
First Amendment was implicated because the parties in that case did not dispute
that the donation boxes "constitute expression." *Recycle for Change*, 856 F.3d at
669.

1 contends the Ordinance is content-based “since differential treatment is afforded
2 to collection bins based on the content of the receptacle’s speech.” However, the
3 Ordinance regulates collection bins “without regard to the charitable or business
4 purpose.” *Recycle for Change*, 856 F.3d at 673. Therefore, the Court finds the
5 Ordinance is not content based or viewpoint based because it does not
6 discriminate on the basis of communicative content. *See id.* at 671-72 (citing
7 *Schaumburg*, 444 U.S. at 632); *see also Nat'l Fed'n of the Blind of Texas, Inc. v.*
8 *City of Arlington, Texas*, 109 F.4th 728, 734-35 (5th Cir. 2024).³

9 Because the Ordinance is content neutral, the Court must “ask whether there
10 is evidence that [the City] passed the Ordinance with an intent to burden
11 [Plaintiff’s] charitable message.” *Recycle for Change*, 856 F.3d at 673. “Strict
12 scrutiny is the appropriate level of review if the Ordinance ‘cannot be justified
13 without reference to’ [Plaintiff’s] charitable message, or if the Ordinance ‘[was]
14 adopted ... because of disagreement with’ [Plaintiff’s] charitable message.” *Id.*
15 (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 135 S.Ct. 2218, 2227, 192 L.Ed.2d
16 236 (2015)).

17 Here, Plaintiff offers no “evidence that [the City] passed the Ordinance with
18 an intent to burden [Plaintiff’s] charitable message.” *Id.* at 673 (emphasis added).
19 Rather, the Ordinance expressly states its purpose “is to establish operational,
20 aesthetic, and maintenance standards to ensure the placement of a Collection Bin
21 does not negatively impact public health, safety, or welfare.” (Ordinance, Section
22 2.) Moreover, the City offers evidence that in 2014, a Los Angeles City
23 Councilmember moved for an ordinance regulating unattended collection boxes
24 because “[m]any unattended collection boxes in the City [of] Los Angeles have
25 become a nuisance, they are placed in the public right of way, property setbacks
26 and parking lots, at times without the owner’s consent. Left unmanaged, they

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³ Cf. *Reed*, 135 S.Ct. at 2227; *Planet Aid*, 782 F.3d at 324-30.

1 attract illegal dumping, graffiti and have become an additional source of blight in
2 many areas of the city.” (Defendant’s RJD Ex. A at 22.) The City also submits a
3 December 21, 2017 Recommendation Report prepared by the Department of City
4 Planning for the City of Los Angeles which noted “[t]here are currently no
5 regulations for collection bins in the City of Los Angeles. The lack of regulation
6 has resulted in many problems, resulting in constituents from around the City
7 voicing concern to their respective Council District representatives about
8 improperly placed, and unmaintained collection bins.” (*Id.* at 4.) The report
9 further noted:

10 Collection bins are often not regularly maintained or monitored,
11 resulting in the overflow of donations, unauthorized access of
12 donations, illegal dumping of trash, and the accumulation of
13 hazardous materials. The lack of regular maintenance and upkeep can
14 lead to further problems, such as the attraction of pests and vermin,
15 and thus pose a danger to public health and safety. Additionally, bins
16 are sometimes placed in inappropriate locations, such as within
17 required parking spaces or setbacks, or in locations that block sight-
lines of street signs and traffic signals. The obstruction of signs,
signals, and points of ingress and egress creates unsafe conditions for
vehicular and pedestrian circulation. Finally, collection bins often
lack information about the operator/owner of the bin, and how the
donations are intended to be used, resulting in confusion from those
wishing to donate items.

18 (*Id.*) The report concluded:

19 Establishing operational, aesthetic, and maintenance regulations for
20 collection bins will improve the livability for residents throughout the
21 City. Requiring permits for collection bins ensures that operators will
22 be vetted and held responsible for issues that arise with their bins.
23 Establishing regulations for collection bins helps to reduce the
24 preponderance of blight and nuisance issues among bins, and helps to
25 provide full information for users of the bins. The proposed ordinance
[] seeks to introduce a regulatory framework for collection bins to
address the concerns that were raised by residents and business
owners in the City of Los Angeles. Thus, the regulations proposed for
collection bins in this Code amendment are needed to promote
responsible operation and attentive oversight of collection bins in the
City of Los Angeles.

26 (*Id.* at 6.)

27 “Because the Ordinance does not, by its terms, discriminate on the basis of
28 content, and there is no evidence that [the City] enacted the Ordinance with an

1 intent to burden [Plaintiff's] message of charitable solicitation or out of any
2 disagreement with that message, the Ordinance is content neutral." *Recycle for*
3 *Change*, 856 F.3d at 674. Therefore, strict scrutiny does not apply to the
4 Ordinance. *See id.* at 673-74 (citing *Reed*, 135 S.Ct. at 2227); *see also Nat'l*
5 *Fed'n of the Blind of Texas, Inc.*, 109 F.4th at 736.

6 Having found the Ordinance is content neutral, the Court must consider
7 whether the Ordinance "survives" intermediate scrutiny. *Recycle for Change*, 856
8 F.3d at 674 (citing *Wilson v. Lynch*, 835 F.3d 1083, 1096 (9th Cir. 2016)). "[A]
9 government regulation" satisfies intermediate scrutiny "[1] if it is within the
10 constitutional power of the Government; [2] if it furthers an important or
11 substantial governmental interest; [3] if the governmental interest is unrelated to
12 the suppression of free expression; and [4] if the incidental restriction on alleged
13 First Amendment freedoms is no greater than is essential to the furtherance of that
14 interest." *Id.* (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968)).

15 As discussed above, the stated purpose of the Ordinance "is to establish
16 operational, aesthetic, and maintenance standards to ensure the placement of a
17 Collection Bin does not negatively impact public health, safety, or welfare."
18 (Ordinance, Section 2; *see also* RJD Ex. A at 4, 6.) The stated interests constitute
19 a substantial government interest and are unrelated to the suppression of Plaintiff's
20 speech. *See Recycle for Change*, 856 F.3d at 674–75; *Nat'l Fed'n of the Blind of*
21 *Texas, Inc.*, 109 F.4th at 736-37.

22 "In the context of content-neutral laws challenged under the First
23 Amendment, a regulation may be narrowly tailored even though it is 'not ... the
24 least restrictive or least intrusive means' of pursuing the substantial governmental
25 interest." *Recycle for Change*, 856 F.3d at 675 (quoting *Ward v. Rock Against*
26 *Racism*, 491 U.S. 781, 798 (1989)). "[T]he requirement of narrow tailoring is
27 satisfied so long as the . . . regulation promotes a substantial government interest
28 that would be achieved less effectively absent the regulation . . . [and s]o long as

1 the means chosen are not substantially broader than necessary to achieve the
2 government's interest." *Id.* Here, the Ordinance provides Collection Bins "shall
3 only be located on lots in commercial zones that contain at least one operating
4 business," "[n]o more than one Collection Bin shall be located on any lot," and
5 "Collection Bins shall not be located:

- 6 (i) Within 20 feet of any public right-of-way.
- 7 (ii) Within 10 feet of any lot line adjoining another lot.
- 8 (iii) Within 100 feet of any A- or R- zoned lot.
- 9 (iv) Within any required landscaped area.
- 10 (v) Within any area that will reduce the number or size of, or
impede access to, any required parking spaces on the lot on
which the Collection Bin is located.
- 11 (vi) Within any area that will impede access to, or be located
within, a trash enclosure area.
- 12 (vii) Within any area that will impair the functioning of exhaust,
ventilation, or fire extinguishing systems.

14 (Ordinance, Section 2.) The Ordinance's restrictions on the location of collection
15 bins is narrowly tailored because they are not substantially broader than necessary
16 to achieve the stated goal of combating "nuisance and blight." *Recycle for*
17 *Change*, 856 F.3d at 675. Plaintiff fails to demonstrate the Ordinance does not
18 serve important governmental interests unrelated to the suppression of protected
19 speech, nor demonstrate that the Ordinance does not "promote[] a substantial
20 government interest that would be achieved less effectively absent the regulation"
21 nor show the Ordinance is "substantially broader than necessary to achieve the
22 government's interest." *Id.* Therefore, the Court finds the Ordinance is narrowly
23 tailored and leaves alternative avenues of communication for Plaintiff to express
24 its message. *See id.; Nat'l Fed'n of the Blind of Texas, Inc.*, 109 F.4th at 738-39.

25 Accordingly, the Court finds the Ordinance survives intermediate scrutiny,
26 and Plaintiff thus fails to demonstrate a likelihood of success or serious questions
27 on the merits of its First Amendment claim. *See Recycle for Change*, 856 F.3d at
28 674-75.

1 **C. Irreparable Harm**

2 Plaintiff argues because it has demonstrated the existence of a colorable
3 First Amendment claim, irreparable harm is clearly established. However,
4 Plaintiff fails to demonstrate a likelihood of success on the merits of its First
5 Amendment claim. Therefore, Plaintiff fails to demonstrate a likelihood of
6 irreparable harm absent a preliminary injunction. *See Winter*, 555 U.S. at 22; *cf.*
7 *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

8 **D. Balance of Equities and the Public Interest**

9 Plaintiff also argues the balance of hardships and public interest weigh in
10 favor of a preliminary injunction because the Ordinance violates Plaintiff's First
11 Amendment rights, and the public has an interest in upholding free speech rights
12 and preventing violation of a party's constitutional rights. However, Plaintiff fails
13 to establish a likelihood of success on its First Amendment claim. Plaintiff thus
14 fails to show the balance of hardships weighs in its favor and does not demonstrate
15 the public has an interest in enjoining the Ordinance.

16 **IV. CONCLUSION**

17 Accordingly, the Court **DENIES** Plaintiff's request for a preliminary
18 injunction. The TRO shall expire on the date of this Order.

19 **IT IS SO ORDERED.**

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21 DATED: September 9, 2024.
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HON. CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE